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April 11, 2005

VIA ELECTRONIC MAIL AND HAND-DELIVERY
The Honorable Charles L.A. Terreni
Executive Director
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

RE: Petition to Establish Generic Docket to Consider Amendments
To Interconnection Agreements Resulting from Changes of Law
Docket No. 2004-316-C, Our File No. 803-10271

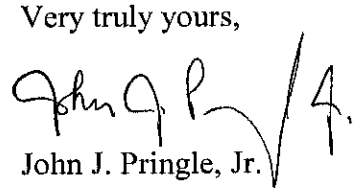
Dear Mr. Terreni:

Enclosed are the original and ten (10) copies of the **Supplemental Brief of the Joint Petitioners** for filing on behalf of NuVox Communications, Inc., Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Charleston, LLC, Xspedius Management Co. of Columbia, LLC, Xspedius Management Co. of Greenville, LLC, Xspedius Management Co. of Spartanburg, LLC, KMC Telecom III, LLC, KMC Telecom V, Inc. (collectively known as the Joint Petitioners) in the above-referenced docket.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it with the bearer of these documents. By copy of this letter, I am serving all parties of record and enclose my certificate of service to that effect.

With kind regards, I am

Very truly yours,



John J. Pringle, Jr.

JJP/cr
cc: John J. Heitmann, Esquire
all parties of record

Enclosures
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BEFORE THE

PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2004-316-C

In the Matter of	)	
	)	
Petition of BellSouth Telecommunications, Inc. to Establish	)	**SUPPLEMENTAL**
Generic Docket to Consider Amendments to Interconnection	)	**BRIEF OF THE JOINT**
Agreements Resulting from Changes of Law Docket	)	**PETITIONERS**

INTRODUCTION

The Order issued by Judge Cooper of the Federal District Court of the Northern District of Georgia provides no analysis that would be helpful to this Commission. In fact, the Order does not even attempt to address the conclusions and reasoning of the Georgia Public Service Commission, but rather merely draws a blind, unsupported inference that the FCC must have intended to change the terms of the parties' interconnection agreements in the *TRRO*. Further, the Order does not address the effect of the parties' Abeyance Agreement, which provides an independent justification for requiring BellSouth to honor the terms of its interconnection agreements. Finally, the weight of authority in the BellSouth region squarely supports the position of the Joint Petitioners.

Before addressing the Order, recall the certitude with which BellSouth argued how "clear" the FCC was in the *TRRO* on the subject of "new adds." During the Oral Argument in this matter, BellSouth referenced a letter that certain CLECs had sent to the FCC seeking clarification on this issue. BellSouth implied that because the FCC did not

respond to these CLECs, the FCC did not agree with the CLEC position. As it turns out, BellSouth was not quite so confident about how "clear" and "self-effectuating" the *TRRO* really is, because BellSouth was itself asking the FCC to "clarify" the *TRRO*. Attached hereto as **Exhibit One** is a letter to the Secretary of the FCC describing meetings between BellSouth and representatives of the FCC Wireline Competition Bureau, wherein BellSouth "urged the Commission to clarify that it intended that no 'new adds' of elements no longer subject to unbundling would be effective as of March 11, 2005."

I. THE GEORGIA FEDERAL COURT ORDER

Not surprisingly, BellSouth has already provided the Order to the Commission, along with a summary thereof. The Order has been appealed to the Court of Appeals for the Eleventh Circuit, and the CLECs are seeking a stay of the Order. As set out herein, the Order is more significant for what it ignores than what it addresses.

A. BellSouth's Reliance on *Mobile-Sierra*

It is misleading for BellSouth to suggest that the Joint Petitioners and the Georgia Public Service Commission have "relied heavily on the *Mobile Sierra* doctrine," Turner Letter at Page 3, while failing to mention that in fact BellSouth relied on the *Mobile Sierra* doctrine *before this Commission.* As the Commission will recall, BellSouth's Brief spent almost three full pages arguing that the FCC *applied* the *Mobile Sierra* doctrine in the *TRRO*. Additionally, BellSouth argued at length during the oral arguments before this Commission that *Mobile Sierra* doctrine applied in this case. Before this Commission BellSouth argued that the FCC applied *Mobile Sierra* in the *TRRO* (despite the fact that the *TRRO* did not 1) reverse the FCC's previous ruling that the doctrine does not apply in the Section 251/252 interconnection context, 2) mention

the doctrine even once; or 3) conduct the rigorous analysis required by *Mobile Sierra* for its application). At least before this Commission in its oral argument and in its Brief, therefore, BellSouth *relied* on the applicability of the *Mobile Sierra* doctrine to justify its erroneous view that the *TRRO* served to abrogate the terms and conditions of interconnection agreements.

The Joint Petitioners' (and the Georgia Commission's) arguments regarding the *Mobile Sierra* doctrine, by contrast, did not *rely* on that doctrine, but rather demonstrated that the FCC *did not rely* on *Mobile Sierra* in the *TRRO* based on the following points: 1) there is no mention by the FCC of the *Mobile Sierra* doctrine in the TRRO; 2) the TRRO does not contain the requisite "public interest" findings required for the application of the *Mobile Sierra* doctrine; and 3) the FCC has explicitly held that the *Mobile Sierra* doctrine does not apply in the interconnection context of Sections 251 and 252 of the Telecommunications Act. In fact, the Joint Petitioners never mentioned the *Mobile Sierra* doctrine in the context of these Emergency Proceedings until BellSouth asserted (in a filing before the Georgia Public Service Commission) that the FCC applied the doctrine in the *TRRO*).

B. The Order Fails to Address the Georgia Commission's Reasoning and Conclusion Regarding *Mobile Sierra*.

Despite making those same arguments before the Georgia Commission, it appears that BellSouth abandoned its reliance on *Mobile Sierra* altogether in Federal District Court. Judge Cooper does not rely on the *Mobile Sierra* doctrine in his Order. In fact, the Order does not even mention *Mobile Sierra* or attempt to address the Georgia

Commission's rationale for its inapplicability.[1] Instead, Judge Cooper "notes that the PSC does not dispute that the FCC has the authority to make its order immediately effective regardless of the contents of particular interconnection agreements. *See* PSC Order at 3." Order at Page 5. The Order fails to point out that "the authority" held by the FCC is the application of *Mobile Sierra.* The Georgia Commission made very clear exactly the "authority" the FCC holds, and the circumstances in which that authority will be exercised:

> BellSouth cites to the *Mobile-Sierra* doctrine in its Response. This doctrine allows for the modification to the terms of a contract upon a finding that such a modification will serve the public need, and it has been held that the FCC has the authority to employ the doctrine. Cable & Wireless, P.L.C. v. FCC, 166 F.3d 1224, 1231-32 (D.C. Circuit 1999). Therefore, it appears that the FCC does have the authority *under the proper circumstances* to amend agreements between private parties.
>
> Georgia Commission Order at Page 3.

Therefore, the Georgia Commission specifically recognized that the FCC has the authority to modify private contracts *only if the FCC applies the Mobile Sierra doctrine* and makes the requisite public interest findings. The Order, however, went on to state, without support or citation, and ignoring the Georgia Commission's analysis, that "it is likely to find that the FCC did that here", Order at 4, without even mentioning the "that" (the application of *Mobile Sierra*) or addressing the Georgia Commission's conclusion that the FCC did no such thing in the *TRRO.* Judge Cooper relied on the Georgia Commission's recognition that the FCC does have the power to abrogate the terms of private contracts as a basis for his ruling, without conceding, addressing or refuting 1) the

[1] Similarly, here in South Carolina BellSouth has never even acknowledged the Joint Petitioners' arguments (or those of the Office of Regulatory Staff) regarding the inapplicability of *Mobile Sierra* to this case. In particular, BellSouth has never addressed the FCC's explicit pronouncement regarding the inapplicability of the *Mobile Sierra* doctrine in the Section 251/252 interconnection context.

Georgia Commission's explanation that any such abrogation required the explicit application of the *Mobile Sierra* doctrine (and the attendant public interest analysis), and 2) the Georgia Commission's finding that the doctrine had not been applied by the FCC in the *TRRO*. In other words, Judge Cooper reasoned as follows: "The Georgia Commission says the FCC can do that (change the terms of interconnection agreements), and so I think it's likely the FCC did that," while leaving out the critical facts that the Georgia Commission Order made clear that *Mobile Sierra* is the *only* way the FCC "could do that" and that the *TRRO* made clear the FCC "did not do that." Judge Cooper's reasoning is severely flawed, and the Order does not even attempt to address the Georgia Commission's ruling on the subject of contract modification. An Order with obvious logical flaws that ignores the decision it stays cannot have any value to this Commission in shedding light on the issues before it.

C. The Cases Cited in the Order Do Not Give the FCC the Power to Change the Terms of Interconnection Agreements

Curiously, the Order is completely devoid of an explanation of *how* the FCC could abrogate private contracts, if the FCC did not apply the *Mobile Sierra* doctrine (explicitly or otherwise) in the *TRRO*. Judge Cooper appears to give his explanation *why* the FCC might appropriately change these private contracts: "The Court further notes that it would be particularly appropriate for the FCC to take that action because it was undoing the effects of the agency's own prior decisions, which have been repeatedly vacated by the federal courts as providing overly broad access to UNEs." Order at 6. As authority for the proposition that changing the terms of private contracts is "appropriate" when the FCC is "undoing the effects of the agency's own prior decisions," the Court cites to a case called *United Gas Improvement Co. v. Callery Props., Inc.*, 382 U.S. 223,

229 (1965) ("*Callery Properties*"). In *Callery Properties,* the Supreme Court determined that the Federal Power Commission had not exceeded its power in ordering gas "producers to make refunds for the period in which they sold their gas at prices exceeding those properly determined to be in the public interest." *Callery Properties* at 229-230.

The decision in *Callery Properties* clearly applied only to a specific fact scenario occasioned by an application of the Federal Natural Gas Act. Nothing in *Callery Properties* suggests that the FCC may abrogate privately negotiated contractual provisions, much less abrogate them with no reflection on the record of any intent to do so or that abrogation was in the public interest. More generally, it is unclear how this case could be applied to interconnection agreements under the statutory scheme of the Telecommunications Act, as the case itself was decided some 31 years prior to enactment of Sections 251 and 252. There is no language whatsoever in *Callery Properties* that touches on whether anything the FCC did in the *TRRO* is "appropriate." The Order quoted one general sentence of a nine-page case and attempted to apply that broad statement about an agency's powers on remand (in a case involving a different statutory scheme applicable to a different agency regulating a different industry) to the narrow issue before the Commission in this case.

BellSouth has not argued to date before this Commission that the *Callery Properties* case has any applicability to this matter. BellSouth's Brief does not cite it. BellSouth's Proposed Order does not mention it. And well that BellSouth has not cited to this case. The case addressed Orders issued by the Federal Power Commission, an agency abolished by Congress in 1977. Also, the case construed certain sections of the Federal Natural Gas Act, 15 U.S.C. § 717, and not the Federal Telecommunications Act.

Additionally, there is no subsequent case that has construed *Callery Properties* to determine how and when the FCC is allowed to change the terms and conditions of private contracts. Further, the FCC has never applied *Callery Properties* as authority for its power to abrogate private contracts. Finally, any significance that *Callery Properties* may have (and as set out above that significance is very slight indeed) is further lessened greatly by the fact that the case did not become part of BellSouth's argument until well after several state commission proceedings on this issue had taken place.

Judge Cooper's citation to *USTA II* is also bewildering. Nothing in *USTA II* gave the FCC authority to abrogate the terms and conditions of private contracts. *USTA II* did not instruct the FCC to disturb interconnection agreements. The Court of Appeals for the D.C. Circuit's expression of frustration with the FCC is not tantamount to ordering, approving, or sanctioning contract abrogation. Therefore, that case has no applicability to the issue at hand.

D. The Order Offers No New Analysis With Respect To The Specific Paragraphs of the *TRRO*, but merely adopts BellSouth's position and gainsays the position of the Georgia Commission and the CLECs

The Court's reasoning on Pages 2-5 of its Order is nothing more than an adoption of BellSouth's arguments before this Commission that Joint Petitioners squarely addressed in their previous Brief, and Joint Petitioners would crave reference to that document. Suffice it is to say that the import and significance of Paragraph 233 is plain on its face and by its text, and comports with previous decisions of the FCC as well as the approach BellSouth has taken to previous changes of law. As set forth below, the Order sidesteps these crucial issues.

E. The Order Does Not Address the Critical Fact That BellSouth's Current Position Regarding the Change of Law Process is Inconsistent with its Past Practice

Joint Petitioners will not respond to each of Judge Cooper's findings with respect to the four factors that in his opinion support the grant of a Preliminary Injunction, because those issues are not before this Commission, and that decision was based upon facts that are part of a separate record. However, it is significant that the Court's Order is absolutely silent with respect to the argument made by CLECs regarding the history of the Act and BellSouth's previous insistence that changes of law benefiting CLECs be implemented not upon the effective date of a particular order, but instead following the negotiation process outlined in the parties' interconnection agreements. The Joint Petitioners would remind the Commission of the maxim "He who seeks equity must do equity." That BellSouth has historically required CLECs to negotiate change of law provisions when negotiation and the passage of time benefit BellSouth is strong medicine indeed in opposition to the position that BellSouth is taking today.

Further, it is incomprehensible how BellSouth could be suffering "irreparable injuy" (i.e. the kind of injury that could not be adequately addressed monetarily) now that March 11th has passed and BellSouth's unilateral interpretation of the *TRRO* has not been implemented by fiat. In fact, recall that BellSouth voluntarily moved its March 11th "line in the sand" to April 17th. Therefore, according to BellSouth's own arguments, its voluntary action in moving its self-imposed deadline for new adds (as opposed to barring new adds on that date) has caused its "irreparable injury." What party consents to irreparable injury, much less takes the very actions that cause same? BellSouth's actions are inconsistent with its theory that it has suffered (and is suffering) irreparable injury.

F. The Order Explicitly Does not Reach the Issue of the Parties' Abeyance Agreement

The Order "does not reach the issue whether an 'Abeyance Agreement' between BellSouth and a few of the defendants authorizes those defendants to continue placing new orders. That issue is still pending before the PSC, and this Court's decision does not affect the PSC's authority to resolve it." Order at 6. Joint Petitioners would direct the Commission to their previously filed Brief in this matter for discussion of why the Abeyance Agreement further obligates BellSouth to honor its interconnection agreements with the Joint Petitioners.

II. THE WEIGHT OF AUTHORITY FROM OTHER JURISDICTIONS FAVORS JOINT PETITIONERS' POSITION

Seven commissions in the BellSouth region have considered the issues raised by the Joint Petitioners[2] Five of the seven have ordered BellSouth to abide by the terms of their existing interconnection agreements and to implement the *TRRO* changes of law pursuant to the standard Section 252 negotiations and arbitration process, as directed by the FCC in paragraph 233 of the *TRRO*.[3] Those state commission decisions are summarized below.

As discussed at length above, the Georgia Public Service Commission on March 8, 2005, ruled that BellSouth must continue to process UNE-P, loop, and transport orders

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[2] Georgia, Kentucky, Mississippi, Louisiana, Alabama, Florida and Tennessee have considered the identical issues or issues substantially similar to those raised in the Verified Petition.

[3] The two states in the minority are Florida and Tennessee. Neither state has reduced its decision to a written order (Tennessee just made its decision earlier today). Thus, the legal justification for either of these decisions is unknown to us at this time. However, our understanding of these decisions is that neither adopts BellSouth's position in its entirety. For example, the Florida Commission appears to require the certification and dispute process set forth in paragraph 234 of the *TRRO* to be self effectuating. The Tennessee Commission appears to require that BellSouth negotiate amendments addressing outstanding *TRO* changes of law such as commingling, EEL audits and EEL eligibility criteria, along with the *TRRO* changes of law regarding new adds, within 30 days and that the status quo will be preserved during that time.

after March 11, 2005 and ordered all parties to "abide by the change in law provisions in their interconnection agreements to implement the terms of the *Triennial Review Remand Order* . . ."[4] The commission reasoned that BellSouth had not cited to "any express language in the *TRRO* at all that says that the FCC intends to reform the contracts"[5] because BellSouth could not do so, given that the FCC intended that parties "implement the rulings of the *TRRO* into their agreements through negotiation."[6] The Georgia Commission also decided that any issues related to true-ups are not an emergency and that they should be decided in the context of its generic change of law proceeding.[7]

The Kentucky Public Service Commission on March 9, 2005, found that the Parties had existing Interconnection Agreements and that the *TRRO* resulted in "a change of law within the meaning of the existing effective contract terms."[8] The Commission also found that "[n]othing in the *Triennial Review Remand Order* justifies an immediate change without the parties having an opportunity to negotiate a new contract."[9] Accordingly, the Commission held that "BellSouth shall follow its contractual obligation to negotiate the effect of changes of law to its interconnection agreements regarding the discontinuation of unbundled network elements."[10]

The Mississippi Public Service Commission on March 9, 2005 held that until the change-of-law issues have been addressed through negotiation or by the commission,

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4 *See Generic Proceeding to Examine Issues Related to BellSouth's Obligations to Provide Unbundled Network Elements,* Docket No. 19341-U, Order on MCI's Motion for Emergency Relief Concerning UNE-P Orders at 7 (Ga. P.S.C. March 09, 2005).

5 *Id.* at 4.

6 *Id.*

7 *Id.* at 6.

8 *Joint Petition for Arbitration of NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications LLC on Behalf of its Operating Subsidiaries, Xspedius Management Co. Switched Services LLC, Xspedius Management Co. of Lexington LLC, and Xspedius Management Co. of Louisville LLC,* Order, Case No. 2004-00044 (rel. March 10, 2005) at 2.

9 *Id.*

10 *Id.*

"BellSouth should be directed to continue accepting and provisioning CLEC orders, as provided for in the ICAs,"[11] and that "BellSouth should be directed to maintain the same pricing that is established in the ICAs."[12] The Mississippi commission also stated that it "will, at a later time, if necessary, direct that there be a true-up proceeding that will determine how rates and charges will be adjusted retroactively to March 11, 2005."[13]

The Louisiana Public Service Commission on March 23, 2005 voted to adopt Staff's recommendation that "the parties implement the FCC's *TRRO* changes regarding UNE-P pursuant to the change of law provisions in their interconnection agreements."[14] The Louisiana commission has not yet issued an order in that matter. However, it is our understanding that , like the Georgia Order, it also will apply to all new adds and will not be limited to UNE-P.

The Alabama Public Service Commission on March 9, 2005, ruled that "BellSouth shall **not**, until further notice from this Commission, cease the provision of any UNE required to be provided pursuant to an existing interconnection agreement and shall provide such UNEs according to the rates established or otherwise referenced in such agreements."[15] At an April 5, 2005 meeting of the Alabama PSC, the APSC unanimously (3-0) approved Administrative Law Judge Garner's recommendation for the APSC to enter an order declaring that the APSC's Temporary Standstill Order dated March 9, 2005 shall remain in effect until APSC considers the transcript of the oral arguments heard on March 29, 2005. Judge Garner stated that a deferral of a decision on

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[11] *In Re: Order Establishing Generic Docket to Consider Change-of-Law to Existing Interconnection Agreements*, Docket No. 2005-AD-139, Order Establishing Generic Docket (rel. Mar. 9, 2005) at 3.

[12] *Id.*

[13] *Id.*

[14] Staff's Recommendation Regarding MCI's Motion for Emergency Relief, Docket U-28131 (filed Mar. 18, 2005) ("*La. Staff Recommendation*") at 6.

[15] *See Temporary Standstill Order and Order Scheduling Oral Argument,* Docket 29393 (Ala. P.S.C. March 9, 2005) (emphasis added) at 9-10.

the merits in the matter would allow APSC an opportunity to consider federal court decisions on pending appeals in "Georgia, Kentucky and Mississippi."

Those decisions have much more precedential value and thus are far more instructive in the instant matter than those out-of-region commission decisions accepting BellSouth's interpretation of the *TRRO*.[16] Joint Petitioners contend that the value of those precedents outside the BellSouth region is particularly limited given that other states and other BOCs have developed different practices and face different facts. For example, in certain states, SBC and CLECs do not have existing interconnection agreements and instead are operating pursuant to commission orders effectively extending the terms of the old agreements. In certain states, Verizon sells UNEs out of its tariffs. As this Commission is well aware, the process for changing tariffs differs markedly from the negotiation and arbitration process used to arrive at authority approved interconnection agreements.

Notwithstanding that those out-of-region decisions have limited value here, there are several state commission decisions that clearly favor the ability of CLECs to continue order new UNEs. For example, the Illinois Commerce Commission held that SBC should be ordered to continue to offer the same UNEs as required by the parties' interconnection agreements until those agreements are amended pursuant to Section 252 of the Act.[17] The U.S. District Court recently denied SBC's motion for a preliminary injunction in that matter.[18]

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16 *BellSouth MCImetro Opposition* at 16-18 (citing Indiana, Kansas, Rhode Island, Texas, Ohio, Maryland, and Massachusetts decisions).

17 *Cbeyond Communications at al. v. Illinois Bell Tel. Co.*, Docket No. 05-0154, Order Granting Emergency Relief (rel. Mar. 9, 2005) at 9.

18 *Illinois Bell Tel. Com. v. Edward C. Hurley at al. and Access One, Inc. et al.*, Case No. 05-C-1149, Memorandum Opinion and Order (N.D. Ill. March 29, 2005).

Additionally, the Michigan Public Service Commission on March 9, 2005 ruled that SBC must follow the change in law requirements of its interconnection agreements and the Michigan PSC ordered SBC to continue to "provision local service requests for mass market unbundled local switching, unbundled network element-platform, DS1 and DS3 high-capacity loops, DS1 and DS3 dedicated transport, and dark fiber loops on or after March 11, 2005, consistent with the requirements of [its] order."[19] Moreover, the U.S. District Court in Michigan on March 11, 2005 granted MCI a preliminary injunction preventing SBC from rejecting order for new adds, including but not limited to new adds for UNE-P.[20]

Furthermore, some of the state decisions cited by BellSouth in its opposition to MCI's Motion for Expedited Relief have been favorable to CLECs in certain respects. For example, the Ohio, Texas, and Kansas commissions have ruled that ILECs must continue to allow CLECs to continue to add new UNE-P line to their embedded customers bases, including moves, changes and additions at new locations.[21] The Texas and Kansas commissions have also clarified that ILECs must adhere to paragraph 234 of the *TRRO* by provisioning UNE orders which have been certified by CLECs, and only

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[19] *See In the matter to commence a collaborative proceeding to monitor and facilitate implementation of Accessible Letters issued by SBC Michigan and Verizon,* Case No. U-14447, Order (Mich. P.S.C. Mar. 9, 2005) at 13.

[20] *MCImetro Access Transmission Services LLC v. Michigan Bell Tel. Co. d/b/a SBC Michigan,* Civil Action No. 05-70885, Order Granting Preliminary Injunction (E.D. Mich. Mar. 11, 2005).

[21] *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement,* Docket No. 28821, Proposed Order on Clarification (Mar. 8, 20005) ("*Texas Clarification Order*") at 1; *In the Matter of Emergency Petition of LDMI Telecommunications, MCImetro Access Transmission Services LLC, and CoreComm NewCo, Inc. for a Declaratory Ruling Prohibiting SBC Ohio from Breaching its Interconnection Agreements and Preserving the Status Quo with Respect to Unbundled Network Element Orders,* Case No. 05-298-TP-UNC, Entry (Mar. 9, 2005) ("*Ohio Order*") at 4; *In the Matter of a General Investigation to Establish a Successor Standard Agreement to the Kansas 271 Agreement, Also Known as the K2A,* Docket No. 04-SWBT-763-GIT, Order Granting In Part and Denying in Part Formal Complaint and Motion for an Expedited Order (Mar. 11, 2005) ("*Kansas Order*") at 5.

afterwards may the ILECs bring disputes regarding those orders to the relevant state commission.[22]

It is also notable that an entire region of state commissions – those in Qwest's service territory – have not had to issue decisions on these issues. That is because Qwest, a BOC just like BellSouth, already has abandoned the ploy used by BellSouth and the others by acknowledging that the *TRRO* changes of law will be incorporated into interconnection via negotiation (and, if necessary, arbitration). Thus, at least one of the Bells heard what the FCC has told them and has spared CLECs and state commissions of this unnecessary layer of litigation.

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22 *Texas Clarification Order* at 1-2, *Kansas Order* at 7.

CONCLUSION

The Joint Petitioners respectfully urge the Commission to take notice of the things the Federal Court Order had to ignore in order to grant BellSouth the relief it sought: 1) the Georgia Commission's analysis of how and when the FCC is authorized to change the terms of interconnection agreements; and 2) the fact that BellSouth's current position with respect to the change of law process is squarely at odds with its previous actions. ***In fact, neither the Order nor BellSouth has ever responded to the Joint Petitioners' demonstration of BellSouth's position about-face, or even attempted to explain why its pure self-interest and the contradictions occasioned thereby entitle BellSouth to a favorable ruling from this Commission.*** Not only do the *TRRO*, an established body of law regarding the FCC's practice, and an Abeyance Agreement require BellSouth to honor interconnection agreements and use the change of law processes negotiated with CLECs, but principles of equity and fundamental fairness require that the Commission rebuff BellSouth's power play.

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Attorneys for the Joint Petitioners

Columbia, South Carolina
April 11, 2005

EXHIBIT 1

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March 4, 2005

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Unbundled Access to Network Elements,
WC Docket 04-313, 01-338

Dear Ms. Dortch:

This is to notify you that on March 3, 2005, BellSouth representatives Jon Banks, Bennett Ross and the undersigned met with Jeff Carlisle, Pam Arluk, Jeremy Miller and Ian Dillner of the Wireline Competition Bureau.

The purpose of this meeting was to discuss implementation issues relating to the Commission's Order on Remand in this proceeding. In particular, BellSouth urged the Commission to clarify that it intended that no "new adds" of elements no longer subject to unbundling would be effective as of March 11, 2005. BellSouth also noted that at least one state Commission in its region had ordered BellSouth to continue providing "new adds" for these elements.

The comments of BellSouth were consistent with its ex parte letter on this issue dated February 24, 2005.

Pursuant to Commission rules, please include this letter in the docket of the above-referenced proceeding.

Sincerely,

Glenn T. Reynolds

Glenn T. Reynolds

Cc: Jeffrey Carlisle
Pamela Arluk
Jeremy Miller
Ian Dillner

BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
DOCKET NO. 2004-316-C

In the Matter of	)	
	)	
Petition of BellSouth Telecommunications, Inc. to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law Docket	)	**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day, one (1) copy of the **Supplemental Brief of Joint Petitioners** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

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April 11, 2005
Columbia, South Carolina